

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RONALD WESLEY	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
DONALD T. VAUGHN, et al	:	
Defendants.	:	No. 99-1228

MEMORANDUM AND ORDER

J. M. KELLY, J.

NOVEMBER , 2001

Presently before the Court is a Motion For Temporary Restraining Order and Preliminary Injunction, filed by Pro se Plaintiff, Ronald Wesley, a prisoner currently incarcerated at the State Correctional Institution at Graterford ("Graterford"). Plaintiff initiated this consolidated action against numerous prison officials, alleging civil rights violations and failure to reasonably accommodate his medical condition. In this instant motion, Plaintiff claims his right of access to courts have been violated by the prison officials' refusal to allow him full and complete access to legal materials related to this action and his state habeas corpus pleadings.

Presently, Plaintiff is housed in Graterford's L-unit, the Restricted Housing Unit ("RHU"), serving disciplinary time until April 21, 2003. Pursuant to Department of Corrections ("DOC") policy, his legal materials and other personal property are now stored in the Property Room. While in the RHU, prisoners are allowed one box of legal materials in the cell at any given

time.<sup>1</sup> Prisoners may obtain another box every 30 days or sooner with approval, but it must be done on an even exchange basis after submitting request slips to the Property Room Officer. Per policy, prison officials provided Plaintiff with one box of legal materials when the Plaintiff requested access to his legal materials. Subsequently, Plaintiff repeatedly asked for all of his legal materials at once while refusing to exchange the materials he already possessed, in violation of the one box rule. Prison officials continually denied his requests and appeals.

#### **DISCUSSION**

When considering a motion for temporary restraining order or preliminary injunction, the district court must decide: (1) whether the moving party has shown a reasonable probability of success in the merits; (2) whether the moving party will be irreparably harmed by the denial of relief; (3) whether granting the preliminary relief will result in even greater harm to the nonmoving party; and (4) whether granting the preliminary relief will be in the public interest. Brian B. ex rel. Lois B. v. Pa Dep't of Edu., 230 F.3d 582, 583 (3d Cir. 2000). All four

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<sup>1</sup>DOC Administrative Policy 801(VI)(D)(5) provides: Disciplinary custody status inmates will be permitted legal materials that may be contained in one (1) records center box. Any additional legal material will be stored and available upon request on an even exchange basis . . . .

DOC Administrative Policy 801(VI)(D)(6) provides: Inmates will be provided access to the institution law library by requesting legal materials in accordance with Departmental policy. Other library books may be requested on a weekly basis.

factors should favor preliminary relief before the injunction will issue. S&R Corp. v. Jiffy Lube Int'l, Inc., 968 F.2d 371,374 (3d Cir. 1992). Plaintiff here complains he will be irreparably harmed without the injunction. Plaintiff, however, must make a clear showing of immediate and irreparable harm, not just the mere risk of harm. Bieros v. Nicola, 857 F. Supp. 445, 446 (E.D. Pa. 1994).

The right of access to the courts, a fundamental right under the Constitution, is not diminished when a prisoner is housed in a segregated unit. See Bounds v. Smith, 430 U.S. 817, 828 (1977); Valentine v. Beyer, 850 F.2d 951, 955 (3d Cir. 1988). Although that right is infringed upon when prison officials "actively interfer[e] with inmates' attempts to prepare legal documents," prisoners do not have "abstract, freestanding rights to a law library or legal assistance." Lewis v. Casey, 518 U.S. 343, 351 (1996). In order to show denial of access to courts, the prisoner must allege that he has suffered an actual injury, such as the loss or rejection of a nonfrivolous legal claim regarding his sentence or conditions of confinement. See Lewis, 518 at 351-55; Robinson v. Ridge, 996 F. Supp. 447, 449 (E.D. Pa. 1997), aff'd, 175 F.3d 1011 (3d Cir. 1999).

At least two cases in the Eastern District of Pennsylvania have addressed Graterford's regulations restricting access to legal materials. See Rauso v. Vaughn, No. Civ. A. 96-6977, 2000

WL 873285, at \*11 (E.D. Pa. June 26, 2000); see also Griffin v. Young, No. Civ. A. 91-1135, 1992 WL 72995, at \*3-5 (E.D. Pa. Mar. 31, 1991). In Rauso, the court granted summary judgment to the defendants where the prisoner complained of a prison regulation which required prisoners housed in the RHU to fill out request forms to get materials from the library. 2000 WL 873285 at \*11. The court reasoned that any short term deprivation of the requested materials, as result of the delay between the time the prisoner requested the material and the time he received them, did not "rise to the level of constitutional deprivation." Id.

Here, other than inconvenience, Plaintiff has failed to make a showing that he suffered any actual injury. Plaintiff has full access to his legal materials, just not all at once. He may have to make repeated requests to exchange his box of materials to comply with prison policy while in the RHU. This, however, does not amount to deprivation of his right of access to courts. Plaintiff here has failed to show that he will be irreparably harmed by the denial of the relief.

Accordingly, his Motion For a Temporary Restraining Order and Preliminary Injunction is denied.

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O R D E R

AND NOW, this                      day of November, 2001, in  
consideration of the Motion For a Temporary Restraining Order and  
Preliminary Injunction filed by the Plaintiff, Ronald Wesley  
(Doc. No. 56) and the Response of the Defendants, Donald T.  
Vaughn, et al, thereto, it is **ORDERED** that the Motion is **DENIED**.

BY THE COURT:

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JAMES MCGIRR KELLY, J.